



Crl.R.C.(MD) No.379 of 2023

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.04.2023

CORAM:

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

Crl.R.C.(MD)No.379 of 2023

Vaigai No.1 Sport Club
represented by its Secretary
S.Panaselvam

... Petitioner/Petitioner/
Accused No.3

Vs.

1.The State represented by
The Inspector of Police,
Thideer Nagar Police Station (L & O),
Madurai City.
(Crime No.572 of 2022)

...Respondent/Respondent/
Complainant

2.The Assistant Commissioner (Excise),
Madurai.

...Respondent

*(R2 is suo motu impleaded as per order of this
Court dated 05.04.2023 in Crl.R.C.(MD)No.
379 of 2023)*

Prayer : This Criminal Revision has been filed under Section 397 read with 401 of Criminal Procedure Code, to call for the entire records pertaining to the order



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passed by the learned Judicial Magistrate No.V, Madurai in Crl.M.P.No.40 of 2023 dated 04.03.2023 and set aside the same and consequently direct the aforesaid learned Magistrate to return the properties i.e., liquor bottles seized from the petitioner's club on 05.11.2022 in connection with the FIR in Crime No. 572 of 2022 pending on the file of the respondent.

For Petitioner : Mr.R.Anand,
For Respondents : Mr.R.Sivakumar,
Government Advocate (Crl. side)

ORDER

This Criminal Revision is directed against the order passed in Crl.M.P.No. 40 of 2023 dated 04.03.2023 on the file of the Judicial Magistrate No.V, Madurai, dismissing the petition filed under Sections 457 and 451 Cr.P.C.

2. The main case of the prosecution is that the petitioner was selling the liquor after the permitted hours and on that basis, FIR came to be registered in Crime No.572 of 2022 for the offences under Sections 4(1)(aaa), 4(1)(i) and 24 of TN Prohibition Act.



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3. Admittedly, the respondent police has recovered 6228 bottles of liquor and cash of Rs.5,250/- from the club premises. The petitioner has filed an application under Sections 457 and 451 Cr.P.C. seeking return of the properties on interim custody. The learned Magistrate, after enquiry, taking note of the objections of the respondent police, has passed the impugned order dismissing the said petition. Aggrieved by the order of dismissal, the petitioner has now come forward with the present revision.

4. The learned Magistrate, by observing that the case has been registered for violating the licence conditions by selling liquor after lapse of permitting time and illegally kept huge quantity of liquor in the premises of club and that the above issues can be decided only at the time of trial and not at the present stage, has dismissed the petition.

5. Admittedly, all the liquor bottles recovered from the petitioner's premises were purchased from the Tasmac.



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6. When the matter was taken up for hearing on 05.04.2023, considering the submissions made by the learned Government Advocate (Criminal Side), the Assistant Commissioner of Excise, Madurai was suo motu impleaded as second respondent.

7. When the matter is taken up for hearing today, the Assistant Commissioner of Excise, Madurai, is present before this Court and the learned Government Advocate (Criminal Side) would submit that in addition to the selling of liquor after the permitted hours, the petitioner has stored huge quantity of liquor bottles in the upstairs portion in contravention to the licence conditions, but the petitioner was permitted to store in a room of 196 sq. ft apart from the bar permit room of 686 sq.ft.

8. It is not in dispute that as per the licence, the petitioner was permitted to get 4000 units at a time and admittedly, the liquor seized was only less than 4000 units.



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9. The learned counsel appearing for the petitioner would submit that though the prosecution has specifically alleged that FIR came to be registered as they were selling the liquor beyond the prescribed hours, but even according to the respondent police, there were no independent witnesses at the time of seizure.

10. As rightly contended by the learned counsel appearing for the petitioner, in the seizure mahazar, the properties were recovered by the Inspector of Police in the presence of other police officials and even according to them, there were no independent witnesses at that time.

11. As rightly contended by the learned counsel appearing for the petitioner, the prosecution has not produced any material or evidence to show that the liquors were sold after the permitted hours on the occurrence day.

12. Considering the entire facts and circumstances, this Court is of the clear view that the impugned order dismissing the petition is not good in law and the same is liable to be set aside.



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13. Accordingly, this Criminal Revision Petition is allowed and the order dated 04.03.2023 made in Crl.M.P.No.40 of 2023 on the file of the Judicial Magistrate No.V, Madurai is set aside. The learned Magistrate is directed to return the properties, i.e., liquor bottles seized in connection with Crime No.572 of 2022 pending on the file of the first respondent, to the petitioner on condition that the petitioner deposits 50% of the value of the liquor seized and for the remaining 50% amount, to execute a bond to the satisfaction of the learned Judicial Magistrate No.V, Madurai and also to produce the title deeds in original in respect of the properties, worth about 50% of the value of the liquor seized before the Judicial Magistrate No.V, Madurai.

10.04.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes/No
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Note : Issue order copy on 11.04.2023



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To:-

- 1.The Judicial Magistrate No.V,
Madurai.
- 2.The Inspector of Police,
Thideer Nagar Police Station (L & O),
Madurai City.
- 3.The Assistant Commissioner (Excise),
Madurai.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR, J.

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**ORDER MADE IN
Crl.R.C.(MD)No.379 of 2023**

10.04.2023